

Farm Service Agency, USDA

§ 764.355

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

(g) Losses associated with horses used for racing, showing, recreation, or pleasure or loss of income derived from racing, showing, recreation, boarding, or pleasure are not considered qualified losses under this section.

[72 FR 63298, Nov. 8, 2007, as amended at 76 FR 75434, Dec. 2, 2011]

§ 764.354 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including, but not limited to, assets with an expected life between one and 7 years) may not exceed 7 years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made as specified in § 764.351(a)(2) and (b) must generally comply with the general security requirements established in §§ 764.103, 764.104, and 764.255(b). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

(1) Real estate,

(2) Chattels and crops, other than horses,

(3) Other assets owned by the applicant,

(4) Third party pledges of property not owned by the applicant,

(5) Repayment ability under paragraph (c) of this section.

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106;

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(d) For loans over \$25,000, title clearance is required when real estate is taken as security.

(e) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit

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which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

[72 FR 63298, Nov. 8, 2007, as amended at 76 FR 75434, Dec. 2, 2011]

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

(c) In the case of an equine loss loan:

(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.

(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.

[72 FR 63298, Nov. 8, 2007, as amended at 76 FR 75435, Dec. 2, 2011]

§§ 764.357–764.400 [Reserved]

Subpart J—Loan Decision and Closing

SOURCE: 72 FR 63298, Nov. 8, 2007, unless otherwise noted. Redesignated at 75 FR 54015, Sept. 3, 2010.

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 of this chapter;

(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.